

Handwritten: OLC 75-0780
DDA 75-1728

11 April 1975

MEMORANDUM FOR THE RECORD

SUBJECT: Meeting with Staff of Subcommittee on Administrative Practice and Procedure re FOIA

STATINTL 1. At the request of Mr. Thomas M. Susman, Chief Counsel of the Subcommittee on Administrative Practice and Procedure of the Senate Committee on the Judiciary, [redacted] of OLC and the undersigned met on 10 April with Mr. Susman and Ms. Janet F. Alberghini, a Staff Assistant of the Subcommittee, to discuss FOIA. Mr. Susman started the meeting by advising us that the Subcommittee staff was holding such meetings with all departments and major agencies to get a feel for the experience of the agencies at this early date in the administration of the FOIA. He stated that it was useful to him and to Ms. Alberghini to have some familiarity with the procedures and the problems being faced by the various agencies so that they could deal more intelligently with questions arising concerning FOIA matters.

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2. Our meeting with the Subcommittee staff members lasted approximately 1 hour and 45 minutes and, in general, was conducted on the basis of our replying to both generalized and specific questions from Mr. Susman. We described in some detail the types of problems that have been created for us by the volume and nature of requests we have received and we provided the staff members with some basic statistical information concerning our requests and the manpower commitments we have made. We attempted to make it clear that while the amended Act is creating serious problems for us, we are nonetheless making every reasonable effort to comply fully with the requirements of the law.

3. Several points developed in our conversation which I believe are noteworthy. For example:

a. Mr. Susman did not ask to meet with us for purposes of determining what type of relief might be afforded to us. On the contrary, he stated "until Congress is through doing whatever they are going to do to you people, there will be little support in Congress for any attempt to grant you any exceptions."

b. He feels quite strongly that our decision not to charge for individuals' requests for their own files was the proper one.

In this respect he stated that our decision had probably saved his office a great deal of work which would have resulted from irate constituents complaining to his Senator.

c. He stated that he is putting all agencies on notice that the committee is being very watchful to preclude departments or agencies attempting to "back door" their way around FOIA through riders, etc., on other legislation.

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d. Mr. Susman stated that his office is in contact with Mr. [redacted] and other people involved with various study groups, centers, etc., and he has heard nothing which would contradict our statements to the effect that the Agency is making a best effort to comply with the FOIA. He was highly critical of the IRS's response to the requirements of the Act and he was critical, to a lesser degree, concerning the FBI. In the case of the latter organization, he pointed out that its responses to requests seemed to reflect a lack of consistent policy.

e. We advised Mr. Susman that in many cases we are finding ourselves unable to meet the 10-day deadline and are sending out letters which, in effect, are technical denials but which advise the requester that we are continuing to work on his request. Mr. Susman found this perfectly acceptable and said that his experience with the requesters that had been in touch with his office is that what they were really concerned with is an indication of good faith on the part of the agencies and departments rather than any precise deadline.

f. Mr. Susman asked how we were handling third-party requests for personal files. We advised him that we were denying such requests on the basis of protection of privacy and that, in addition, we were requiring at least date and place of birth from those people requesting their own files. Mr. Susman appreciated the problem and appeared pleased to see that we were showing proper concern in this regard. He did appear, however, to have some trouble in grasping the distinction between our release of information concerning an individual which has been made public (e.g., the Ramsey Clark speech in Hanoi) and the reluctance to release public material which we may have selected for some reason to include in an individual's file. I believe we finally convinced him that our selection of newspaper clippings, etc., for inclusion in an individual's personal file could be misinterpreted by a third party and, therefore, did have privacy aspects.

g. We raised with Mr. Susman the problem of release of material which could be construed as "evidence" vis-a-vis the several investigations being conducted on the Agency. He was emphatic in his opinion that FOIA comes first. He stated that just because investigators have indicated an interest in certain material does not mean that that material cannot be released through FOIA channels prior to the investigators having reviewed it. If there is any question in that regard, he said he would have the Select Committee send the Agency a letter to that effect.

h. Mr. Susman remarked that in his opinion it would be a good course for the Agency to follow to release "information that should be made public" on our own initiative rather than waiting for its release forced by either FOIA or investigation. This led to some discussion as to our public information responsibilities, if any.

i. We discussed the request that has been received for our budget information and Mr. Susman felt rather strongly that we would lose in the future our battle to keep our entire budget secret. He feels that we will be compelled to release at least the total figure and probably other segregable portions of the budget.

j. It is apparent that as far as this particular subcommittee and its staff are concerned, every attempt will be made to hold agencies' feet to the fire as regards FOIA. As Mr. Susman admitted himself, he has only a superficial knowledge or appreciation for the unique problems faced by CIA -- a point which will be troublesome when we reach the point of seeking specific relief.

4. Mr. Susman is quite obviously intensely interested in the Freedom of Information Act and feels that, in general, the more information the Agency makes public the better. His feeling was further exemplified by his expressed thought that perhaps the Agency should establish a reading room where material that should be made available to the public could be placed for perusal. [redacted] and I pointed out that we really did not feel that public reading rooms were consistent with the operations of a secret intelligence agency. This led to some inconclusive discussion as to how secret the Agency should be in the future.

5. Notwithstanding the rather sharp differences of outlook and philosophy noted above, Mr. Susman applauded the Agency's philosophical

approach to FOIA and expressed a willingness of his office to assist, to the extent they considered appropriate, in any problems that might arise in the future.

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Assistant for Information, DDA

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